



Minnesota Pollution Control Agency

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REVISOR OF STATUTES

November 16, 2013

The Honorable Mark Dayton
Governor, State of Minnesota
75 Rev. Dr. Martin Luther King Jr. Blvd.
Room 130
St. Paul, MN 55155-1606

The Honorable David Dill
Minnesota State Representative
House Environment and Natural Resources
Policy Committee
571 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1606

The Honorable Jean Wagenius
Minnesota State Representative
House Environment, Natural Resources,
and Agriculture Finance Committee
449 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Tom Hackbarth
Minnesota State Representative
Ranking Minority Member
House Environment and Natural Resources
Policy Committee
309 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Denny McNamara
Minnesota State Representative
Ranking Minority Member
House Environment, Natural Resources and
Agriculture Finance Committee
359 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

The Honorable Paul Thissen
Minnesota State Representative, Chair
Legislative Coordinating Commission
100 Rev. Dr. Martin Luther King Jr. Blvd., Rm 463
St. Paul, MN 55155-1606

The Honorable David J. Tomassoni
Minnesota State Senator
Senate Environment, Economic Development
and Agriculture Division
Capitol, Room 317
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1606

The Honorable John Marty
Minnesota State Senator
Senate Environment and Energy Committee
Capitol, Room 323
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1606

The Honorable David M. Brown
Minnesota State Senator
Ranking Minority Member
Senate Environment and Energy Committee
109 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1206

The Honorable Bill Ingebrigtsen
Minnesota State Senator
Ranking Minority Member
Senate Environment, Economic Development
and Agriculture Division
143 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1206

RE: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by
Minn. Stat. § 14.05, subd. 5

Minnesota Statute § 14.05, Subdivision 5, states:

"By December 1 of each year, an agency must submit to the governor, the legislative coordinating commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion."

The Minnesota Pollution Control Agency (MPCA) has conducted an internal review of its rules and has found several obsolete requirements in Minn. R. chs. 7035 (Solid Waste) and 7045 (Hazardous Waste). In addition to its internal review, the MPCA also requested help from external customers (e.g. Minnesota Chamber of Commerce, Association of Minnesota Counties and representatives of environmental advocacy groups) to identify rules that are obsolete, unnecessary or duplicative. No additional obsolete rules were identified from outside sources.

Rules identified as obsolete.

- **Minn. R. pt. 7035.9120, subparts 4 and 5.** These subparts regulate the transportation of infectious waste. Certain aspects of these regulations relate to the activities of the Minnesota Department of Health, which has amended their rules regulating infectious waste management. As a result, some corresponding requirements in Minn. R. pt. 735.9120 are obsolete or require a correction to the cross reference.

Additional requirements in these subparts correspond to marking and placarding requirements of the Federal hazardous materials regulations administered by the U.S. Department of Transportation. Because the Federal requirements supercede the state requirements, the conflicting state requirements are obsolete.

- **Minn. R. pt. 7045.0075, subpart 5.** This subpart provides a mechanism to petition for the use of an alternate manifest for hazardous waste transportation. Because Federal regulations prohibit the use of alternative manifests by 2014, the state process for obtaining approval of alternative manifests is obsolete.
- **Minn. R. pt. 7045.0125, subparts 4, 5 and 6.** These subparts, which relate to the transportation of hazardous waste being recycled, contain obsolete citations to Minn. Stat. § 221.0355 which has been repealed.

- ***Minn. R. pt. 7045.0325, subpart 2.*** This subpart provided exceptions to the federal uniform hazardous waste manifest. The U.S. Environmental Protection Agency has preempted and prohibited all state manifest requirements at variance with the Federal manifest, making the state-only exceptions obsolete.
- ***Minn. R. pt. 7045.0365, subpart 3.*** Item I in this subpart establishes requirements applicable to hazardous waste transfer facilities. These requirements conflict with Federal recordkeeping requirements of the regulations administered by the U.S. Department of Transportation under the authority of the Hazardous Materials Transportation Act and are therefore obsolete.
- ***Minn. R. pt. 7045.0395, subpart 5.*** This subpart requires specific actions in response to a spill of hazardous waste. The requirements of this part are preempted by the Federal Hazardous Materials Transportation Act and are obsolete.
- ***Minn. R. pt. 7045.0686.*** This rule establishes the requirements for the management of spent or waste household batteries. These requirements became obsolete with the adoption of the Federal Universal Waste rule.

The Minnesota Pollution Control Agency's planned process for the repeal of the identified obsolete rules.

As described below, the MPCA initiated a rulemaking to address certain obsolete requirements identified in the 2012 Obsolete Rules Report. As part of the scoping process for that rulemaking, the rules identified above were also found to be obsolete. Therefore, the MPCA has already begun the rulemaking process to repeal or amend all the above identified rules. A Request for Comments regarding the proposed amendments was published in the October 21, 2013 *State Register* and the MPCA expects that the amendments that correct or repeal the obsolete requirements will be effective in 2014.

Status of obsolete rules identified in the Minnesota Pollution Control Agency's 2012 Obsolete Rules Report.

In the 2012 Obsolete Rules Report, the MPCA identified several rules that are obsolete. The MPCA has addressed each of these rules as follows.

- ***Minn. R. ch. 7021 (Acid Deposition Control).*** This chapter was repealed in the 2013 legislative session in HF 976/Session Law 114, article 4, section 108.
- ***7011.0725, subp. 2 (Performance Test Procedures).*** The MPCA is currently in the rulemaking process to repeal this obsolete rule. A Request for Comments for this Air Omnibus rule was published on September 17, 2012 and the MPCA expects that the changes needed to eliminate this obsolete rule will be adopted in 2014.
- ***Minn. R. part 7053.0405, subps. 3, 4 and 5 (Requirements for Aquaculture Facilities).*** Minn. R. part 7053.0405, subparts 3, 4 and 5 contain language relating to variances for a specific type of aquaculture facility. The MPCA is currently in the rulemaking process to repeal these obsolete rules. A Notice of Intent to Adopt Rules Without a hearing to address the repeal of these rules was published on September 30, 2013 and the MPCA expects that the changes will be effective in January, 2014.
- ***Minn. R. part 7076.0140, subps. 1 and 2 (Notice of Financial Assistance Availability).*** Minn. R. 7076.0140 relates to the administration of Clean Water Partnership grants. Subpart 2 was repealed in a rulemaking that was effective March 18, 2013 (37 SR 1224) and subpart 1 will be modified in a rulemaking the MPCA is currently conducting. A Notice of Intent to Adopt Rules

Without a Hearing to address the obsolete rule language in subpart 1 was published on September 30, 2013 and the MPCA expects that the changes will be effective in January, 2014.

- ***Minn. R. parts 9210.0120, subpart 5 (Grant Application Procedures), 9210.0810, subp. 1 (Request for Proposals).*** These rules relate to the administration of various solid waste grants and contracts. The MPCA is in the rulemaking process to amend these rules. The MPCA published a Request for Comments to address these obsolete rules on October 21, 2013 and expects that the changes will be effective in 2014.
- ***Minn. R. parts 9210.0300 to 9210.0380 (Solid Waste Processing Facility Demonstration Program) and Minn. R. part 9220.0530, subp. 6 (Reporting Requirements for Waste Tire Transporters).*** These rules were repealed in the 2013 legislative session in HF 976/Session Law 114, article 4, section 108.

Cost of preparing this report

In compliance with Minn. Stat. § 3.197, the cost of preparing this report is as follows:

Staff cost: \$2,400.00. This includes time for review of rules, customer research and the time to complete the report.

If you have any questions regarding this report, please feel free to contact me at 651-757-2241.

Sincerely,



Kirk Koudelka
Assistant Commissioner

KK:CN:jlir

cc: Greg Hubinger